



GRIFFIN  
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# Guidance Notes

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***The Liechtenstein  
Foundation***



## **1. Introduction**

This document serves as an overview of the legal institution of the foundation as codified in the Liechtenstein foundation law (LFL). The many advantages of a Liechtenstein foundation are briefly summarized below:

- embedded in Liechtenstein's stable political system with a more than 90-year history of the Liechtenstein Foundation Law; this results in a very wide range of know-how and a high level of professionalism
- due to Liechtenstein's membership in the European Economic Area, the foundation will also exist in the entire EU as a fully recognized legal entity and enjoys easy access to the EU markets
- Liechtenstein's authorities are easily approachable, pro-business and customer orientated
- strong protection against future claims against the founder and the beneficiaries (asset protection – see Griffin Trust Guidance Note on Asset Protection)
- enabling a smooth and well managed capital transfer over several generations
- no succession duty in Liechtenstein and the ability to limit the annual tax in Liechtenstein to CHF 1,800
- suitable as a vehicle for Private Trust Structures
- anonymous charitable contributions under professional supervision

## **2. What is a Foundation?**

A foundation is a legally independent special-purpose fund (art. 1 LFL) incorporated with a minimum capital of CHF/EUR/USD 30,000 and represented by the foundation council (arts. 24 et seq LFL).

Unlike a trust, it has legal personality, thereby owning the assets it holds outright without any split of legal and beneficial ownership as is the case under common law. Accordingly, the assets of the foundation no longer form part of the founder's estate but are owned by the foundation under civil law.

A foundation does not have any shareholders in the classic sense. Rather, when setting up a foundation, the founder appoints beneficiaries or specifies a purpose for which the foundation assets shall be held, managed and distributed.

The structure of the foundation is defined in the articles of association and in the by-laws. The detailed and confidential by-laws can be formulated individually by the founder in a flexible manner.

Any legally acceptable conditions can be attached to the distribution of the assets of the foundation. For instance, payment can be spread over several years or only specific persons can benefit, e.g. from income only.



The foundation council consists of a minimum of two persons. These can be natural persons or legal entities and at least one foundation council member must either be a Liechtenstein trustee or a person with similar status.

#### **4. *Revocable vs. Irrevocable***

A foundation can be revocable or irrevocable. In a revocable foundation the founder retains the right to direct the foundation council to return the foundation assets to him as the founder. With an irrevocable foundation, the founder parts with dominion over the foundation assets completely and may only receive assets from the foundation in his/her capacity as a beneficiary.

Many countries treat as the owner, the person who has the power to revoke a foundation. In the case of an irrevocable foundation, the ownership of assets is viewed as being distinct from the person who transferred the assets to the foundation. Therefore there is a trade-off between flexibility and the effectiveness as a planning tool.

#### **5. *Fixed Interest vs. Discretionary Interest***

It is possible to structure a foundation with “fixed interests” or as a “discretionary” foundation. A fixed interest foundation is generally one in which one or more beneficiaries have a fixed entitlement to an ascertainable part of the income or principal of the foundation. More common in the context of long term preservation of capital and income, however, is the use of a discretionary foundation, where the beneficiaries have no absolute current right to the assets of the foundation, with any distribution to them being made only at discretion of the foundation council – this is also a key factor in any asset protection structure. Where the foundation council is given discretion regarding, say, the allocation of assets among beneficiaries or the timing of distributions, the foundation articles are generally accompanied by by-laws which set out the founder’s intentions regarding the future disposition of the assets. Ideally, this discretion should facilitate the foundation council in which the founder has confidence.

#### **7. *Foundation By-laws and Letter of Wishes***

The Foundation By-laws are to a foundation what the schedules (including administrative and dispositive provisions) of a trust deed are to a trust. They generally provide the foundation council with the founder’s determinations as to the administration and disposition of the Foundation’s assets and the appointment and removal of protectors, amongst other provisions. They usually include the details, the descending order of beneficial interest and the claims of each of the beneficiaries (in case of a fixed interest foundation) or they describe the mere class of beneficiaries (in case of a discretionary foundation). This document is legally binding on the foundation council but it is not lodged with the commercial register.

In case of a discretionary foundation, the foundation documents quite often include a legally non-binding private letter of wishes, similar to what is done in relation to trusts. The letter of wishes generally provides the foundation council with the founder’s wishes, guidance and recommendations as to the exercise of the foundation council’s dispositive and administrative powers and provides the foundation council with a reference to the founder’s intentions in setting up the foundation. It should merely assist the foundation council in determining the founder’s wishes in respect of distributions.



## 8. Protector

The founder may appoint a control body (a “protector”) in accordance with art. 11 LFL which supervises the foundation council.

The protector can be a trusted person of the founder to give the founder comfort in giving away control over the assets to a foundation and its foundation council. The founder’s representatives can be appointed as protector, for instance lawyers, bankers or other friends. It is also not necessary to record the name of the protector in the Commercial Registry.

Appointing a protector (or a protector committee) to the foundation provides for additional checks and balances between the foundation council, the founder and the beneficiaries in that certain powers (positive or negative) may be exercised by the protector. A protector is generally considered to be bound by the same fiduciary duties as the foundation council, depending on the powers given to him. The rights and powers of a protector may vary in each circumstance but can contain *e.g.* the following powers:

- right to information regarding the assets of the foundation (*e.g.* insight into the accounts)
- direct power or consent to appoint and remove of members of the foundation council
- direct power or consent to add and remove beneficiaries
- and others as applicable

## 9. For what purposes can a foundation be used?

The private foundation can be used for all conceivable purposes as long as they are lawful and not contrary to public policy and the foundation itself does not undertake business activities in the process.

- **Succession planning**
  - Liechtenstein law allows for complete freedom in choosing the beneficiaries and the conditions on which they are to receive benefits. This allows the structuring of benefits to subsequent generations in a responsible and sustainable manner.
  - Ownership of assets in a foundation protects those assets from fragmentation on the death of the wealth owner. This is particularly important in relation to privately owned businesses.
- **Asset Protection**
  - A foundation can legally guard against risks arising from claims often as a consequence of the death of the founder, insolvency, divorce, family members looking for part of the pie or excluded beneficiaries arguing that they ought to benefit, amongst others.
  - Asset protection looks to keep assets beyond reach of claimants who do not have a legitimate claim and ensures security of receipt for beneficiaries of genuine succession planning structures (see Griffin Trust Guidance Note on Asset Protection).



- ***Acting as a Private Trust Foundation (PTF)***
  - It is not uncommon for wealthy families to set up their own private entity to act as trustee of their family trusts. Traditionally, this is achieved by incorporating a Private Trust Company (PTC) which in turn is held by a non-charitable purpose trust (in order to perpetuate the shareholding).
  - A Private Trust Foundation (PTF), however, offers a more streamlined approach to the structuring of a Private Trust structure as it effectively replaces the need to set up a PTC as well as the non-charitable purpose trust holding the shares in the PTC.
  - Family members can serve on the board of the PTF or act as protector as means of retaining a minimum level of control without comprising the robustness of the structure from an asset protection perspective.
  
- ***Acting as a holding vehicle for a Private Trust Company***
  - Rather than using non-charitable purpose trusts to hold the shares in a PTC (as mentioned above), a foundation may be set-up for the purpose of holding the shares in the PTC.
  - The articles and by-laws of the foundation can be drafted to include said purpose, but also to benefit beneficiaries, on the happening of certain events.
  
- ***Charitable giving***
  - Foundations can serve exclusively charitable purposes. The founder defines the form of donations and has the right (but not the obligation) to assume an oversight function in the charitable foundation.
  - Charitable foundations are subject to a special supervisory regime to make sure that the foundation council follows the founder's wishes in the absence of named beneficiaries.